

**LEGISLATIVE COUNCIL
OF
INDIA**

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1858

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PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA,

January to December 1858

Published by the authority of the Council.

A. SAVINLE, CALCUTTA PRINTING AND PUBLISHING COMPANY (LIMITED),
NO. 1, WESTON'S LANE, COSSITOLLAH.

1858.

Meeting of the Council after the 1st of June next—which would allow two months to creditors of the Nabob for making known any objections which they might have to the Bill—and that a notification to that effect be published in the *Gazette*. Accordingly, he should now move that the Standing Orders be suspended in order that the Bill might be proceeded with without delay.

MR. ELIOTT seconded the motion, which was then agreed to.

MR. PEACOCK moved that the Select Committee on the Bill be instructed to present their Report at the first Meeting of the Council after the first of June next, and that a notification to that effect be published in the *Gazette* for general information.

Agreed to.

FORT OF TANJORE.

MR. ELIOTT moved that the Bill “for bringing the Fort of Tanjore and the adjacent territory under the Laws of the Presidency of Fort St. George” be referred to a Select Committee consisting of Mr. Currie, Mr. Harington, and the Mover.

Agreed to.

EXCLUSIVE PRIVILEGES TO INVENTORS.

MR. PEACOCK moved that the Bill “for granting exclusive privileges to Inventors” be referred to a Select Committee consisting of the Chief Justice, Mr. Grant, and the Mover.

Agreed to.

The Council adjourned.

Saturday, May 1, 1859.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*,
in the Chair.

Hon. J. P. Grant,	P. W. LeGeyt, Esq.
Hon. Major Genl. Sir	E. Currie, Esq.
Jas. Outram,	and
Hon. H. Bickette,	H. B. Harington, Esq.
Hon. B. Peacock,	

The following Message from the Governor General was read by the Vice-President :—

LIGHT-DUES (GULF OF CAMBAY).

THE Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 10th April 1858, entitled “A Bill to repeal the Laws relating to the levy of Light-dues at Ports within the limits of the Gulf of Cambay.”

G. F. EDMONSTONE,

*Secy. to the Govt. of India,
With the Govr. Genl.*

ALLAHABAD;
April 20th, 1858. }

THE CLERK brought under the consideration of the Council the following Petitions :—

COTTON-FRAUDS (BOMBAY).

A Petition of certain Native Cotton Merchants and Dealers residing in the Town and Island of Bombay against Section VI of the Bill “for the better suppression of frauds in the Cotton-trade in the Presidency of Bombay.”

MR. LEGEYT moved that the Petition be referred to the Select Committee on the Bill.

Agreed to.

CONSERVANCY ACT.

Also a Petition of the Bengal Bonded Warehouse Association praying for a modification of Section XXXV of Act XIV of 1856 (for the Conservancy and Improvement of the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca,) relative to the powers of the Commissioners to allow projections, not exceeding a certain width, from houses.

MR. CURRIE moved that the Petition be printed.

Agreed to.

PORTRAIT OF THE MARQUIS OF DALHOUSIE.

THE CLERK reported to the Council that he had received a communication from the Secretary to the Government of India in the Home Department forwarding an Extract of a Despatch from the Court of Directors on the subject of the Marquis of Dalhousie's Portrait.

MR. GRANT moved that the communication be printed.

Agreed to.

RESTORATION OF POSSESSION OF
LANDS (N. W. P.)

MR. HARRINGTON moved that the Council resolve itself into a Committee on the Bill "to facilitate the recovery of land and other real property, of which possession may have been wrongfully taken during the recent disturbances in the North-Western Provinces of the Presidency of Bengal;" and that the Committee be instructed to consider the Bill in the amended form in which the Select Committee had recommended it to be passed.

MR. RICKETTS said, having been appointed a Member of this Council only within a few minutes, he was unprepared to oppose the Motion to go into Committee on this Bill; but he wished to take that, the earliest opportunity he had had, of saying that he did not think this piece-meal legislation suited to the circumstances of the North-Western Provinces, or the crisis with which the Council had to deal. Many of those Provinces were still in the possession of the rebels. Though we had recovered possession of some of them, little better than anarchy prevailed still. The condition of all those Provinces was changing day by day: the condition of no two was the same; and it appeared to him really impossible that any Act that was applicable to one or two, should be applicable to the whole. He should much prefer, either the introduction of one comprehensive Act to enlarge the powers of the Governor of the North-Western Provinces, or the suspension for a term of the operation of the Regulations now in force within them. Were our Code of Regulations acknowledged by all to be a good Code, the Council might hesitate before it suspended its operation. But the Code, especially that part of it which related to procedure, was avowedly a bad Code; the Council had been employed, now for a long time, in the preparation of one which was to supersede it; and amongst the people who lived under it, there was a very large number who would not have the slightest objection to its being suspended whilst that measure was in progress. He had seen, not long ago, a letter from an Officer employed in one of the districts lately made over to the Government of the Punjab in which the writer said—"Let

what will happen, the people of these districts will never regret the rebellion, for they have escaped the blight of the accursed Code." He found that Code spoken of in the following terms in the Pamphlet recently published entitled "The Crisis in the Punjab":—

"The exaggerated elaboration of its routine and ramification of its legal defences, as distasteful to those who had to administer it, as incomprehensible to the people, furnished no hope that any district could be held by either moral force founded upon its merits, or on affectionate reminiscences of its points of procedure."

He would not say that that picture was not exaggerated; but he did not think that even the Honorable Mover of this Bill would say that he believed the Code to be dear to the hearts of any of the people in any part of the Provinces in the North-West. And if that was the case, surely it would be good to strengthen the hands of the local Government by suspending the operation of the Code for a period, and creating the Governor Dictator, and making his will law.

He (Mr. Ricketts) was aware that he would not have the Council with him, and he would not, therefore, oppose the motion to go into Committee upon the Bill; but he had thought it right to avail himself of the very first opportunity of expressing the views which he entertained with regard to this subject.

MR. HARRINGTON said, he did not think that this was the time to go into the question as to whether existing Regulations were popular or not. That question had nothing to do with the Bill before the Council. An emergency had arisen in the North-Western Provinces for which it was necessary to make provision. That emergency consisted in many persons having been wrongfully deprived of the possession of their estates during the recent disturbances who, if left to the ordinary remedy of a regular Civil action, would be subjected to considerable delay and expense. This Bill was intended to provide for these persons an easy and speedy means of obtaining redress; and it appeared to him that the mode of procedure which it prescribed would be found equally simple and summary with anything in the Code of the Punjab

which had been so highly extolled in some quarters. He, therefore, hoped that the Council would go into Committee on the Bill.

MR. PEACOCK said, the Honorable Member opposite (Mr. Ricketts) had stated that the circumstances of the various districts of the North-Western Provinces were so different that no Act applicable to one or two could be applicable to the whole of them, and he had described this Bill as piece-meal legislation. The Bill had been prepared with great care for the purpose of being adapted to districts which differed from each other in their circumstances. It would be seen upon reference to the Bill that it was not to take effect absolutely in every district of the North-Western Provinces, but only in those districts in which the Executive Government should deem it necessary to appoint Special Commissioners for the purpose of carrying out its provisions. The Act would not take effect of its own force. Where a district required the Act, the local Government would appoint Special Commissioners, who would act under a procedure provided for them, and in that district the jurisdiction of the ordinary Courts would be suspended; but in those districts in which Special Commissioners were not appointed, the ordinary rules of the existing law would continue in force. It appeared to him, therefore, that this Bill, so far from being unsuited to the circumstances of the North-Western Provinces, was entirely adapted to them. He was not standing there to support the existing Code of Regulations; but he certainly should hesitate a long time before he could assent to the proposition of the Honorable Member that it would be expedient to appoint a Dictator whose will should be law, even if he believed that the Council had the power to legalize such an appointment. In his opinion, however, the Council had no such power. By the Charter Act, the power of making Laws and Regulations was vested in the Governor General in Council, constituted in the manner provided by the Act; but they were prohibited from making any Laws or Regulations which should vary the provisions of the Act. It was, therefore, beyond their power to enable any man to make Laws and carry them into

Mr. Harington

effect. He should be very sorry to see any man vested with such extensive powers in any part of these dominions—vested with powers so extensive, that his will should be law; and he did not think that even existing circumstances rendered the introduction of such a measure necessary in the North-Western Provinces.

THE VICE-PRESIDENT said, before putting the question, he would ask the permission of the Council to say a few words upon it.

In what he proposed to say, he desired to be understood as not committing himself to any opinion on the question raised by the Honorable Member who had this-day taken his seat. That question, as he understood it, was not so much the propriety of appointing a Dictator to govern the North-Western Provinces at his own will, as the more moderate proposition of reducing those Provinces to the condition of a non-Regulation Province. He by no means committed himself to the opinion that it would be inexpedient to do this. All he said was that, whatever might be the expediency of doing it, he thought that the question was a very large one, and that, if brought forward, it ought to be brought forward with the full weight and authority of the Executive Government, after mature consideration by them of the propriety of establishing the system proposed in lieu of the Regulations now in force in those Provinces. This very large question of altering the whole system of law by which certain Provinces were governed, was very different from the question involved in the measure now before the Council; and it appeared to him that it would be improper to mix them up together. The measure before the Council was designed to provide a remedy for a particular evil which had arisen out of the recent disturbances—to give as simple and speedy means of redress as possible to owners of real property who had been wrongfully driven out of possession. It would be hard on that class of sufferers to delay the passing of a measure like this, while the subject of the future government of the Provinces might be under the consideration of the Government. Every day of continued dispossession was a hardship on the rightful owner, and increased, as all the world

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Mr. Harrington

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knew, the difficulty of recovering possession. Without offering any opinion, therefore, with respect to the general views expressed by the Honorable Member, he must say it appeared to him that it was not desirable to delay the passing of the present Bill.

The motion to go into Committee on the Bill was then put and agreed to.

Sections I to X were passed as they stood.

Section XI provided for the enforcement of the order restoring possession to the rightful owner, and for the adjustment and recovery of mesne profits.

MR. RICKETTS said, as he read the Section, the Collector, on a case being referred to him for the purpose of adjusting the amount of mesne profits payable, was to endeavor to ascertain what collections had been actually made by the party wrongfully in possession, and to levy the amount for the benefit of the rightful owner. If that was the intention, the enquiry would be so difficult that it would be almost impossible for the Collector in any length of time to ascertain what the collections had amounted to. It appeared to him (Mr. Ricketts) that matters would be greatly simplified if the following words were introduced into the Section after the words "In cases so referred," in the 17th line:—

"If the settlement papers of the property, or any other papers shewing the rental at the period of settlement are forthcoming, the Collector shall adjudge as mesne profits the rental of the land for the term of its dispossession, minus ten per cent. expenses of collection, and any sum that may have been paid to the British Government as Revenue. Should such papers not be forthcoming, the Collector shall adjudge the mesne profits of a whole year to be sixty Rupees on each hundred Rupees of the sudder jumma of the estate; and the profits of each month, if the period of possession has been less than a year, at one-twelfth of such sum, minus any sum that may have been paid as Revenue to the British Government; and"—

If these words were introduced, all the trouble and the many vexations of endeavoring to ascertain what had been collected, would be saved. It was true that, by adopting such a plan, the party who had wrongfully taken possession might occasionally have to pay something more than he had collected; but

he (Mr. Ricketts) could see no objection to that. If a man took possession of an estate wrongfully, he could not claim to be protected from the consequences of his wrongful act. He (Mr. Ricketts) should, therefore, move as an amendment that the words he had read be inserted after the words "In cases so referred," in the 17th line of the Section.

MR. HARRINGTON said, the duty which this Section would impose on the Collector would in no way differ from the duty which that Officer had to perform when a decree of the Civil Court which awarded mesne profits to the successful party was referred to him for the purpose of adjusting the amount. In such cases, no great difficulty was experienced by the Collector in ascertaining what amount of mesne profits had been realized by the party declared liable for the same; and he (Mr. Harrington) did not see that it would be more difficult for that Officer to carry out the part of the Bill under consideration. It might not be wrong in principle that the person who had taken wrongful possession of an estate should be responsible to the owner for the rents of the period during which he had been in possession, whether he had collected them or not; but in the latter case, some provision would be necessary to enable him to recover the amount from the ryots, which would be decidedly objectionable; and as, upon the whole, he preferred the Section as it stood, he should vote against the amendment.

MR. GRANT said, the amendment might, contrary to the intention of the Honorable Mover, act very unfairly towards the party dispossessed; for supposing that the property had been in the possession of the wrong-doer during that period of the year when the rents are realized, in each month of which he had perhaps realized one-eighth part of the whole annual return, it would be unfair to put off the rightful owner at the rate of only one-twelfth part a month. He (Mr. Grant) thought that it would be better to leave the adjustment of mesne profits under the Bill to the discretion of the Collector, binding him by no stringent rules, but leaving him to act according to common sense in each case, when, if he could not ascertain the precise amount, he would make an award as nearly to that amount as he

could under the circumstances of the case before him.

MR. PEACOCK said he did not see any reason for a new procedure for ascertaining the amount of mesne profits payable by the defendant. What the Collector would have to ascertain was the loss which the person wrongfully dispossessed had sustained during the period he was kept out of possession. The mode which the Bill as it stood provided for that purpose, involved no greater difficulty than the mode which the Collector had to adopt in the execution of a decree awarding mesne profits in a regular suit. The object of the Bill was that persons who had been forcibly dispossessed of estates during the rebellion, should be restored to possession as speedily as possible, and that they should be re-imbursed the amount which they had lost during the period of dispossession. The amendment proposed that, where a case was referred to the Collector for the purpose of adjusting the amount payable, if papers shewing the rental of the property at the period of settlement were not forthcoming, the Collector should adjudge the mesne profits of a whole year to be sixty per cent. on the sudder jumma, and the profits for each month, if the period of wrongful possession had been less than a year, to be one-twelfth of that sum, minus payments made on account of Government Revenue. The Honorable Member of the amendment had shewn no reason why sixty per cent. of the sudder jumma should be taken as the measure of the profits. The estate might have increased or deteriorated in value since the sudder jumma was fixed: in the one case, sixty per cent. of the sudder jumma might be too little, and in the other, it would be too much.

Then, again, as the Honorable Member to his left (Mr. Grant) had pointed out, the amendment proposed that, in ascertaining the mesne profits for less than a year, they should be taken at one-twelfth of sixty per cent. on the sudder jumma for each month, whereas the profits actually received in each month might have been very much greater.

But it appeared to him that the objection to the amendment which had been pointed out by the Honorable Member for the North-Western Provinces was insuperable. If the wrong-

doer was to pay sixty per cent. on the sudder jumma whether he himself had collected the rents or not, was he to be empowered to recover the amount from the under-tenants?—was the Government to recognize his right to collect the rents from them?—or was he to pay a per-centage on the sudder jumma, and yet not have the right to realize the rents from the tenants? It was impossible for the Council to say what proportion the mesne profits of an estate during any particular period bore to the sudder jumma of the estate. The amount was a question of fact which the Bill proposed to leave to the determination of the Collector.

It appeared to him that by far the better course would be to leave the Collector to determine that fact in the manner in which he now ascertained the amount of mesne profits when that question was referred to him in regular suits. He believed that at present, no great difficulty was experienced in doing so; and he should, therefore, vote against the amendment.

MR. RICKETTS said, it was quite true that the sum which the wrongdoer would have to pay under the mode of adjustment which he had proposed, might not be the exact sum which he ought to pay; but *vis dat qui cito dat*. The party who had been dispossessed would much prefer speedy payment to waiting an indefinite period for the ascertainment of the precise amount of mesne profits which should be paid to him. The Honorable Member for the North-Western Provinces had said that it would not be more difficult for the Collector to ascertain mesne profits under the Section as it stood than it was for that Officer to ascertain mesne profits in the execution of decrees. But the Honorable Member must be aware that the execution of decrees for mesne profits frequently stood over for years and years. That was the case in every district in the North-Western Provinces; and the ascertainment of mesne profits in the present state of things would be more difficult than it had ever been before.

Although the Council was against him, he should press his amendment to the vote.

The amendment being put, the Council divided.

Aye 1.
Mr. Ricketts.

Noes 7.
Mr. Harington.
Mr. Currie.
Mr. LeGeyt.
Mr. Peacock.
Sir James Outram.
Mr. Grant.
The Chairman.

So the motion was negatived.

MR. RICKETTS moved that, in the concluding part of the Section—which declared that all proceedings of a Collector under the Section should be subject to the control and revision of “the superior Revenue Authorities”—the words “Commissioner of Revenue whose orders shall be final” be substituted for the words “superior Revenue Authorities.”

After some conversation, the Motion was by leave withdrawn.

MR. RICKETTS then moved that the words “superior Revenue Authorities” at the end of the Section be left out, and the words “next superior Revenue Authority whose order shall be final” be substituted for them.

The amendment was agreed to, and the Section then passed.

Sections XII to XIV, and the Preamble and Title, were passed as they stood.

The Council having resumed its sitting, the Bill was reported.

NATIVE PASSENGER SHIPS.

On the Order of the Day for a Committee of the whole Council on the Bill “for the regulation of Native Passenger Ships” being read, it was moved by Mr. LeGeyt that the consideration of the Bill be postponed.

Agreed to.

AUTHENTICATION OF GOVERNMENT STAMPS.

MR. PEACOCK moved that Sir James Outram be requested to take the Bill “to provide for the authentication of Stamped Paper issued from the Stamp Office in Calcutta” to the President in Council, in order that it might be submitted to the Governor General for his assent.

Agreed to.

The Council adjourned.

Saturday, May 8, 1858.

PRESENT :

The Hon’ble the Chief Justice, *Vice-President*,
in the Chair.

Hon. Major General	P. W. LeGeyt, Esq.,
Sir James Outram,	E. Currie, Esq.,
Hon. H. Ricketts,	and
Hon. B. Peacock,	H. B. Harington, Esq.

The following Message from the Governor General was read by the Vice-President:—

REGULATION OF PORTS (FORT ST. GEORGE).

MESSAGE No. 139.

The Governor General informs the Legislative Council that he has given his assent to the Bill which was passed by them on the 17th Instant, entitled “A Bill for the Regulation of certain Ports within the Presidency of Fort St. George.”

By order of the Right Honorable the Governor General

G. F. EDMONSTONE,
Secy. to the Govt. of India,
with the Governor General.

ALLAHABAD;
The 27th April 1858. }

MERCHANT SEAMEN.

THE CLERK brought under the consideration of the Council a Petition of the Peninsular and Oriental Steam Navigation Company against Section LXVI of the Bill “for the amendment of the law relating to Merchant Seamen.” The Petition objected to the space allowed to lascars, and prayed that, before the passing into law of so much of the Bill as related to providing the number of cubic feet of accommodation to all Seamen, Europeans or Asiatics, indiscriminately, the Council would allow the Petitioner to be heard by himself, his Counsel, agents, and witnesses, either before the Select Committee on the Bill, or before a Committee of the whole Council.

MR. CURRIE said, the case was one in which there did not seem to be the slightest necessity for the Petitioner to be heard by Counsel, even if it were usual for parties to be so heard. If the